

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2010-21-C - ORDER NO. 2010-475

JULY 28, 2010

IN RE: Application of Cricket Communications,) ORDER GRANTING ETC
Incorporated for Designation as an Eligible) STATUS FOR LIFELINE
Telecommunications Carrier) AND LINKUP SUPPORT
) FROM THE FEDERAL
) UNIVERSAL SERVICE
) FUND

I. Introduction

This matter, arising under 26 S.C. Code Ann. Regs. 103-690 and 690.1 (2009), 47 U.S.C. § 214(e)(2), and 47 C.F.R. §§ 54.101, comes before the Public Service Commission of South Carolina (“Commission”) on the Application of Cricket Communications, Inc. (“Cricket,” “Applicant,” or “Company”) (f/k/a Hargray Wireless, LLC) for Designation as an Eligible Telecommunications Carrier (“ETC”) in Berkeley, Charleston, Colleton, Dorchester, Lancaster, and York Counties. Cricket filed its Application on January 7, 2010, seeking ETC status in order to offer Lifeline and Link-Up support to its qualifying customers and draw from the federal Universal Service Fund (“USF”) in connection with those services. Under 47 C.F.R. §§ 54.401 and 54.411 respectively, Lifeline provides qualified consumers with a discount on monthly charges for their primary home phone line, and Link-Up lowers the cost eligible consumers pay for setting up new phone service.

The Company timely published notice of this matter, as required by 26 S.C. Code Ann. Regs. 103-817(C)(3)(a) (2009), in *The Post and Courier* newspaper and *The Herald* newspaper, which are generally circulated throughout its service territory. No protests or petitions to intervene have been filed. By virtue of S.C. Code Ann. §58-4-10(B) (Supp. 2009), the Office of Regulatory Staff ("ORS") is a party of record in this Docket. ORS does not oppose the Application. As there is no opposition, Cricket seeks expedited review of this matter.

II. Background

Cricket is a Delaware corporation authorized to do business in South Carolina. It provides advanced wireless service ("AWS") using its own facilities in Berkeley, Charleston, Colleton, Dorchester, Lancaster, and York Counties under the authority of the Federal Communications Commission ("FCC").¹ Additionally, Cricket is also a commercial mobile radio service ("CMRS") provider that is already designated by the South Carolina Public Service Commission as an ETC in Beaufort, Hampton, and Jasper Counties by Order No. 2007-804 (November 14, 2007) in Docket No. 2003-227-C.

III. Areas Where Designation is Sought

Cricket requests ETC designation in those portions of its FCC authorized service areas consisting of Berkeley, Charleston, Colleton, Dorchester, Lancaster, and York counties, which includes the non-rural telephone company wire centers and the rural telephone company wire centers listed on Exhibits "E-1" and "E-2" (Berkeley, Charleston,

¹ Cricket holds FCC licenses AW-BEA026-C and AW-BEA023-C, permitting it to provide AWS in South Carolina. AWS is commonly associated with 3G wireless services.

Colleton and Dorchester counties) and "F-I" and "F-2" (York and Lancaster counties) attached to the Application. Maps depicting Cricket's proposed ETC designation areas attached to the Application are listed as Exhibits "G-I" (Berkeley, Charleston, Colleton and Dorchester counties) and "G-2" (York and Lancaster counties).²

Since Cricket seeks designation only in its FCC authorized service area in the named counties, it is necessarily requesting designation below the study area level of four rural telephone companies. Accordingly, Cricket recognizes that the Commission may engage in a cream skimming analysis as contemplated under R. 103-690(C)(b) (2009). Notwithstanding the provisions of this regulation, Cricket submits that a cream skimming analysis is unnecessary given that the Application seeks ETC designation solely for the purposes of obtaining low income support from the federal USF. As this type of support is designed to reduce the initial costs of obtaining service (Link-Up) and the monthly cost of acquiring telecommunications service (Lifeline) to qualified low income customers, little likelihood exists that the designation will allow Cricket to cream skim low cost areas to the exclusion of high cost areas.

The FCC recently addressed this issue and declined to perform a cream skimming analysis where the applicant sought ETC designation for Lifeline support only.³ This fact is consistent with the underlying purpose of the "cream-skimming" analysis, which is

² Exhibit "G-2" also depicts portions of Cricket's FCC licensed area in the Charlotte- Rock Hill BEA which includes counties in South Carolina for which Cricket does not seek designation as well as counties in North Carolina.

³ See *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, Order 09-18, ¶ 39 n. 101 (March 5, 2009) (explaining that "we need not perform a cream skimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only").

designed to alleviate concerns that if a competitive ETC were to seek to serve a disproportionate share of high-density wire centers in a rural incumbent local exchange carrier's ("ILEC") service area it would receive more support than the ILEC's average cost to serve the entire service area, thus obtaining a windfall while harming the incumbent provider.⁴ In light of this rationale, the FCC has long-since declined to employ a cream skimming analysis where unnecessary.⁵ As a result, Cricket requests a waiver of the cream skimming analysis.

IV. Requirements for Designation

The purpose of an eligible telecommunications carrier designation is to further the public interest goal of ensuring that consumers in all regions, including those in rural, insular, and high cost areas, have access to telecommunications services comparable to those of urban areas.⁶ An ETC is a common carrier designated by a state commission as eligible to receive federal universal service support.⁷ State commissions derive this authority from 47 U.S.C. § 214(e)(2), and for the purposes of this Docket, the requirements for ETC designation in South Carolina are described under 26 S.C. Code Ann. Regs. 103-690(C)(a) (Supp. 2009), which further elaborates that a carrier seeking

⁴ *In the Matter of Federal-State Joint Board of Universal Service*, Report and Order, 20 FCC Rcd 6371, CC Docket No. 96-45, Order 05-46, ¶ 49 (March 17, 2005).

⁵ *ETC Requirements Order*, at ¶ 52 (finding that cream-skimming is a concern in rural areas but that the analysis is "unnecessary" in non-rural service areas because of the different cost model); *Virgin Mobile Order*, at ¶ 39 n. 101; *see also id.* at ¶ 11 n. 40 (further recognizing the lack of a rural versus non-rural distinction for a Lifeline-only applicant because low-income and high-cost support are fundamentally different).

⁶ *See* 26 S.C. Code Ann. Regs. 103-690(A)(2) (Supp. 2009).

⁷ *See* 47 C.F.R. § 54.201.

designation must offer and advertise the services enumerated under 47 C.F.R. § 54.101. Specifically, these services are: (1) voice grade access to the public switched telephone network; (2) local usage provided free of charge to end users; (3) dual tone multi-frequency signaling or its equivalent (“DTMF”); (4) single party service that allows, *inter alia*, a wireless user exclusive use of a dedicated message path for the length of a transmission; (5) access to emergency services, such as 911;⁸ (6) access to operator services for assistance with billing or the completion of a call; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.

In addition to meeting the above requirements, 26 S.C. Code Ann. Regs. 103-690(C)(a)(1)(C) maintains particular conditions for those carriers only seeking USF support for participation in Lifeline and Link-Up programs. To satisfy these conditions, an applicant must:

- (1) Submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants;
- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, its ability to reroute

⁸ 47 C.F.R. § 54.101(5) describes access to emergency services as “access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government. “Enhanced 911” is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. “Access to emergency services” includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.”

traffic around damaged facilities, and its capability of managing traffic spikes resulting from emergency situations;

- (3) Demonstrate that it will satisfy applicable consumer protection and service quality standards;
- (4) Demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation;
- (5) Certify by affidavit signed by an officer of the company that the carrier acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area;
- (6) Certify by affidavit signed by an officer of the company that it does offer or will offer the services that are supported by the federal universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (7) Certify by affidavit signed by an officer of the company that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

The record shows that Cricket meets both the federal and state requirements listed above.

Still further, the FCC has weighed in on what it considers additional minimum requirements for ETC designation with its order, dated March 17, 2005, in Docket No. 05-46 (“ETC Order”). The FCC encourages states to adopt the requirements of the ETC Order, now codified at 47 C.F.R. § 54.202, but it is not required. Moreover, under 47 C.F.R. § 54.202, these added requirements refer to the designation of ETCs as specified by 47 U.S.C. § 214(e)(6), which only pertains to “common carriers not subject to state

commission jurisdiction.”⁹ Although we decline to adopt the ETC Order, many of these suggested requirements are included in our own regulations with the limited exception of certain reporting requirements found at 26 S.C. Code Ann. Regs. 103-690.1.

According to R. 103-690.1, ETCs participating in Lifeline and Link-Up programs must provide annual reporting information to the Commission and ORS by June 30 of each year and meet explicit requirements for administering these programs.¹⁰ The annual reporting information, specified by R. 103-690.1(B)(b), requires the carrier to submit detailed statistical information about its customers, or potential customers, and make certain certifications about conducting the programs. Additionally, this regulation requires the carrier to submit copies of responses to the Lifeline Verification Survey or Certification filed with the Universal Service Administrative Company on August 31st of each year.

In administering the programs, requirements for Lifeline are specified separately from the single requirement for Link-Up. Under R. 103-690.1(E)(a), ETCs shall offer Lifeline to all qualifying low-income residents in the designated service area as follows:

- (1) ETCs shall publicize the availability of the service in a manner reasonably designed to reach those likely to qualify for the service;
- (2) ETCs shall commit to offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the

⁹ These additional minimum requirements also appear to be oriented towards high cost fund applicants, while the Applicant in this Docket is only seeking low cost support.

¹⁰ For wireless carriers, the annual report must contain a commitment to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Services. For other ETCs, the annual report must contain a commitment that they meet the service quality standards of R. 103-663.

consumer elects to receive toll limitation service, that service becomes part of that consumer's Lifeline service;

(3) ETCs may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll limitation service from the carrier where available;

(4) ETCs shall verify annually that its Lifeline customers meet the program qualification;

(5) ETCs shall notify Lifeline subscribers a minimum of 60 days prior to termination of their service if the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline qualifying criteria; and

(6) ETCs shall not charge Lifeline customers a monthly number portability charge.

Under R. 103-690.1(E)(b), ETCs shall offer Link-Up to all qualifying low-income consumers in the designated service area by publicizing the availability of Link-Up service in a manner reasonably designed to reach those likely to qualify for the service and shall provide a reduction of the customary charge for connecting telecommunications service for a single line at the consumer's principal place of residence. The reduction shall be in conformance with federal regulations governing the cost of Link-Up service.

V. Analysis

A. Offer of Services in Compliance with 47 C.F.R. § 54.101:

As an AWS provider, Cricket is a carrier allowed to seek ETC designation from this Commission. *See Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Recd 8776, 8858-59, ¶145 ("*First Report and Order*"). Cricket asserts that it is capable of offering the required services under R. 103-690(C)(a) and 47 C.F.R. § 54.101 as follows:

(1) Voice grade access to the public switched telephone network ("PSTN"). Cricket's system is capable of transmitting and receiving voice communications, including signaling that a subscriber seeks to place a call or that a call is incoming by interconnection arrangements with local exchange carriers ("LECs").

(2) Local usage. Cricket offers a wide variety of local usage plans which are comparable to those offered by incumbent LECs in the area proposed for designation. In Exhibit A of the Application, Cricket describes its local calling plans that are offered in the area requested for designation, each of which reflects a local calling area greater than the local calling area of the incumbent LECs. Cricket provides rate plans that include a substantial local calling area and a usage component that allows for unlimited local calling. Since Cricket offers multiple rate plans that afford universal service, subscribers have the opportunity to select a rate plan that best suits their needs based on calling areas and local calling included in each such plan.

(3) Dual tone multi-frequency signaling or equivalent ("DTMF"). Cricket provides a method of signaling that facilitates the transportation of call set-up and call detail information through the use of out-of-band digital signaling and in-band signaling that is the functional equivalent to DTMF signaling, in accordance with the FCC's requirements.

(4) Single-party service or equivalent. Cricket allows a wireless subscriber use of a dedicated message path for the length of a particular transmission by providing a dedicated message path for the length of a user's wireless transmission.

(5) Access to emergency services. Cricket currently provides its customers with access to emergency services through 911 dialing throughout the proposed designation area. Where a public safety answering point ("PSAP") has enhanced 911 capability, Cricket also delivers automatic numbering information ("ANI") and automatic location information ("ALI"). Further, Cricket asserts that it pays all applicable E-911 fees in a timely manner.

(6) Access to operator services. Cricket provides access to automatic and live assistance for subscribers to arrange for billing or completion of a telephone call.

(7) Access to interexchange service. Cricket makes interexchange or toll call through interconnection agreements with interexchange carriers ("IXCs"). On the majority of Cricket's plans, interexchange calls are unlimited, meaning they can be made for no additional charge with all outgoing call minutes being treated the same. Moreover, subscribers on plans without unlimited interexchange calls are able to reach an IXC of choice by having money in flexible accounts.

(8) Access to directory assistance. Cricket subscribers are provided access to directory assistance by dialing either "411" or "Area Code + 555-1212."

(9) Toll limitation for qualifying low-income consumers. Once designated as an ETC, Cricket will participate in the Lifeline and Link-Up programs for qualifying low-income customers. The Lifeline calling plans that Cricket intends to offer do not distinguish between local and toll calls. If for any reason Cricket changes that offer, it will meet the toll limitation requirement by providing toll blocking.

B. Designations Sought/Services Offered Under 26 S.C. Code Ann. Regs. 103-690:

Cricket seeks ETC designation only for the purpose of participating in the low income support component of the Federal USF (the Lifeline and Link-Up programs) in its FCC authorized service area and does not seek designation for the purpose of receiving high cost support from the federal USF. As an ETC, Cricket will offer a universal service package to customers who are eligible for Lifeline and Link-Up support and will use federal USF support funds only for that purpose. This service offering will be competitive with those of ILECs serving the requested area and afford eligible South Carolinians in the affected counties a choice in their Lifeline service.

With respect to this service offering, to meet the requirements of R. 103-690(C)(a)(1)(A) Cricket commits to provide service throughout the portions of Berkeley, Charleston, Colleton, Dorchester, Lancaster, and York counties in the proposed designation area to all qualifying customers making a reasonable request for service. In addition, and as reflected in Exhibit B of the Application, Cricket certifies that it will: (a) provide service on a timely basis to all requesting customers within Berkeley, Charleston,

Colleton, Dorchester, Lancaster, and York counties where its network already passes the potential customer's premises, and (b) provide service within a reasonable period of time if the potential customer is within these counties but outside Cricket's existing network coverage, if service can be provided at a reasonable cost by (i) modifying or replacing the requesting customer's equipment, (ii) deploying a roof-mounted antenna or other equipment, (iii) adjusting the nearest cell tower, (iv) adjusting network or customer facilities, (v) reselling services from another carrier's facilities to provide service, or (vi) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(1) Two Year Plan:

Cricket's two year plan, attached as Exhibit C to the Application, meets the requirements of R. 103-690(C)(a)(1)(C)(1) by describing its plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs.

(2) Ability to Remain Functional During Emergencies:

Complying with R. 103-690(C)(a)(1)(C)(2), Cricket has the ability to remain functional in emergency situations in that its system: (a) features battery back-up power capability at each mobile switching center and cell site consisting of dedicated generators fueled by gas or diesel and multiple mobile gas/diesel generators for cell sites in each market, all of which do not require an external power source to remain functional and can function until such time as traffic can be re-routed or external power restored, (b) is capable of re-routing call traffic around damaged facilities through changing call routing

and in certain areas, through deploying a cell on wheels ("COW"), (c) can manage traffic spikes resulting from emergency situations by re-routing of calls - the priority of which is determined based on traffic, cell site location, and time of day considerations, and (d) is able to take advantage of mobile command centers established by its switch vendors in the event of a total switch outage.

(3) Consumer Protection and Service Quality Commitment:

Complying with R. 103-690(C)(a)(1)(C)(3), Cricket commits to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

(4) Local Usage Plan:

Cricket's local usage plan, attached as Exhibit A to the Application, meets the requirements of R. 103-690(C)(a)(1)(C)(4) by demonstrating the wide variety of local usage plans comparable to the ones offered by the incumbent LEC in the service areas for which it seeks designation. As stated above, Cricket provides rate plans which include not only a substantial local calling area, but a usage component that provides consumer values given that each provides for unlimited local calling. Since Cricket offers multiple rate plans which afford universal service, subscribers have the opportunity to select a rate plan that best suits their needs based on calling areas and local calling included in each such plan.

(5) Equal Access Obligation:

Complying with R. 103-690(C)(a)(1)(C)(5), Cricket submitted an affidavit, attached as Exhibit D to the Application, which acknowledges that the FCC may require

it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the area for which designation is sought.

(6) Facilities:

Complying with R. 103-690(C)(a)(1)(C)(6), Cricket submitted an affidavit, attached as Exhibit D to the Application, which acknowledges that it offers services that are supported by the federal USF low-income support mechanisms using its own facilities.

(7) Advertisement of Services:

Complying with R. 103-690(C)(a)(1)(C)(7), Cricket submitted an affidavit, attached as Exhibit D to the Application, which acknowledges that it advertises through media of general distribution the availability of, and applicable charges for, the services supported by the USF low-income support mechanism.

C. ETC Designation is in the Public Interest:

Low income support from the federal USF to provide Lifeline and Link-Up programs is designed to reduce the monthly cost and increase the availability of telecommunications services for eligible consumers. This cost reduction is distributed on a household basis and directly affects the price that an eligible customer pays. Through the record of this Docket, Cricket has shown that all USF support received by the Company will be used to provide Lifeline and Link-Up services to consumers, thus promoting the availability and affordability of telephone service to low income users. In the Commission's view, the designation of Cricket as an ETC will increase customer

choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain these telecommunications services will likely benefit from additional rate plan options and increased access to emergency services. Therefore, subject to the commitments and conditions discussed in this Order, the Commission concludes that Cricket has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

FINDINGS AND CONCLUSIONS:

Based on the record of this Docket, we find and conclude that:

1. Since this matter is uncontested and ORS does not oppose the Application, Expedited Review should be granted as contemplated by S.C. Code Ann. § 1-23-320(F);
2. Since Cricket seeks only pass-through support for low-income customers, a cream-skimming analysis is unnecessary in this Docket;
3. Cricket meets all federal and state requirements for designation as an ETC in the proposed areas where it seeks such designation;
4. Granting this Application furthers the goals and purposes of Section 254 of the Telecommunications Act of 1996 in that access to the federal Universal Service Fund will ensure Lifeline and Link-Up support to its qualifying customers; and
5. Granting this Application is in the public interest.

IT IS THEREFORE ORDERED:

1. Expedited review is granted.
2. The cream skimming analysis is waived.

3. Cricket is designated as an ETC, as of the effective date of this order, in the requested areas.

4. Cricket shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.

5. All federal USF funding received as a result of this Order will be used to Lifeline and Link-Up support for low-income customers.

6. Cricket shall meet the reporting and certification requirements for ETCs as outlined by 26 S.C. Code Ann. Regs. 103-690.1 and file the annual reporting information with the Commission no later than June 30 of each year. A copy of this report shall be provided to ORS.

7. Cricket shall submit copies of responses to the Lifeline Verification Survey or Certification filed with the Universal Service Administrative Company on August 31st of each year.

8. Cricket shall administer the Lifeline and Link-Up program in conformity with 26 S.C. Code Ann. Regs. 103-690.1(E)(a) and (b).

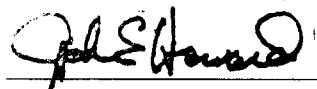
9. Should the Commission determine that Cricket has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules, or regulations, the Commission may deny Cricket's annual recertification as an ETC.

JULY 28, 2010

PAGE 17

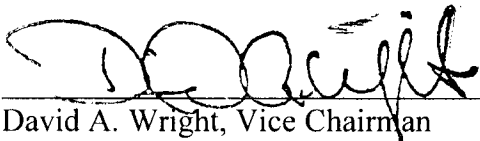
10. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)